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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 LONDON WHITBY, et al.,

12 Plaintiffs,

13 vs.

14 CHELSEA INVESTMENT
CORPORATION, etc., et al.,

15 Defendants.
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CASE NO. 14cv1633-LAB (BLM)

**ORDER ON MOTION TO
CLARIFY**

17 Plaintiffs sought leave to file an amended complaint in this putative class action.
18 Among other things, the proposed amended complaint would have added two plaintiffs from
19 the Windwood Village Apartments, Daud and Shokria Nawaey. The Court gave leave to
20 amend to add these two new plaintiffs, but denied leave to add plaintiffs who live in other
21 apartment complexes.

22 Plaintiffs have now filed a motion for clarification (Docket no. 74) informing the Court
23 for the very first time that they have a related case pending in which the minor children of
24 some of the Plaintiffs in this case are themselves plaintiffs. The motion does not identify the
25 other case by name or case number, but it appears to be 15cv355-H (WVG), *Ethan Whitby*
26 *v. Chelsea Investment Corporation*. Failing to apprise the Court of this during the pendency
27 of their motion to dismiss was improper, as was their failure, and the failure of the plaintiffs
28 in the other case, to file a notice of related case. See Civil Local Rule 40.1(f). One of

1 Plaintiffs' attorneys in this case is also counsel for plaintiffs in 15cv355, so obviously they
2 knew about the cases' relationship. The Court also notes that in case 15cv355, the plaintiffs
3 are all minors, and no guardians *ad litem* are identified. See Fed. R. Civ. P. 17; *Prudential*
4 *Ins. Co. of America v. Remington*, 2013 WL 3070629, slip op. at *1 (E.D.Cal., June 17,
5 2013). Presumably their parents are serving in that capacity. See *id.*; *Seibels, Bruce & Co.*
6 *v. Nicke*, 168 F.R.D. 542, 544 (M.D.N.C. 1996) (in the absence of an appointed guardian *ad*
7 *litem*, parents are presumed to act in a child's interest).

8 Plaintiffs never sought leave in this case to add any residents of the Windwood Village
9 Apartments except for the Nawaeyes. (See Ex Parte Motion for Leave to Amend (Docket no.
10 67), at 5:15–26; Proposed Amended Complaint (Docket no. 67-3) at 1, 4:12–5:20 (naming
11 plaintiffs).) Nor did Plaintiffs apprise the Court of the other pending action. The issue of
12 adding other family members was not briefed and Defendants were not given an opportunity
13 to be heard. Therefore the Court did not grant leave to add any other plaintiffs. Furthermore,
14 because this is a putative class action, other residents of the Windwood Village Apartments
15 who are members of families with young children are already members of the putative class.
16 Why they would be bringing a parallel lawsuit, filed by an attorney representing Plaintiffs in
17 this action, and presumably under the direction of their parents — who are parties to this
18 action — is unclear. These multiple errors have put the two cases in a very awkward posture.

19 It may happen that case 15cv355 will be transferred to the undersigned judge
20 pursuant to this Court's rule on related cases. If and when that happens, and if the posture
21 of the cases has not been set right already, the Court will manage the two cases so that they
22 can be properly litigated. But in the meantime, nothing prevents Plaintiffs from taking
23 appropriate corrective action, such as by seeking leave to dismiss or add particular parties
24 or claims in the two cases. If they do so, they should seek a comprehensive solution, rather
25 than attempting to make corrections piecemeal. They should also confer with opposing
26 counsel and, if possible, proceed by joint motion rather than *ex parte*.

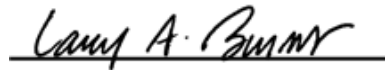
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1 The Court believes this clarifies its order, and the Clerk is directed to terminate the
2 motion.

3 **IT IS SO ORDERED.**

4 DATED: March 5, 2015

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6 **HONORABLE LARRY ALAN BURNS**
7 United States District Judge
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